



**U.S. Citizenship  
and Immigration  
Services**

**Non-Precedent Decision of the  
Administrative Appeals Office**

In Re: 17945408

Date: AUG. 23, 2021

**Appeal of Texas Service Center Decision**

Form I-140, Immigrant Petition for Alien Worker (Advanced Degree, Exceptional Ability, National Interest Waiver)

The Petitioner, a marketing manager, seeks second preference immigrant classification as a member of the professions holding an advanced degree and as an individual of exceptional ability, as well as a national interest waiver of the job offer requirement attached to this EB-2 classification. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2).

The Director of the Texas Service Center denied the petition, concluding that the Petitioner had not established that a waiver of the required job offer, and thus of the labor certification, would be in the national interest.

On appeal, the Petitioner offers previously submitted documentation and a brief asserting that he is eligible for a national interest waiver.

In these proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will dismiss the appeal.

**I. LAW**

To establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification for the underlying EB-2 visa classification, as either an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Because this classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

Section 203(b) of the Act sets out this sequential framework:

(2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. –

(A) In general. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or

who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of job offer –

(i) National interest waiver. . . . [T]he Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien’s services in the sciences, arts, professions, or business be sought by an employer in the United States.

Furthermore, while neither the statute nor the pertinent regulations define the term “national interest,” we set forth a framework for adjudicating national interest waiver petitions in the precedent decision *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016).<sup>1</sup> *Dhanasar* states that after a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion<sup>2</sup>, grant a national interest waiver if the petitioner demonstrates: (1) that the foreign national’s proposed endeavor has both substantial merit and national importance; (2) that the foreign national is well positioned to advance the proposed endeavor; and (3) that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.

The first prong, substantial merit and national importance, focuses on the specific endeavor that the foreign national proposes to undertake. The endeavor’s merit may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact.

The second prong shifts the focus from the proposed endeavor to the foreign national. To determine whether he or she is well positioned to advance the proposed endeavor, we consider factors including, but not limited to: the individual’s education, skills, knowledge and record of success in related or similar efforts; a model or plan for future activities; any progress towards achieving the proposed endeavor; and the interest of potential customers, users, investors, or other relevant entities or individuals.

The third prong requires the petitioner to demonstrate that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. In performing this analysis, USCIS may evaluate factors such as: whether, in light of the nature of the foreign national’s qualifications or the proposed endeavor, it would be impractical either for the foreign national to secure a job offer or for the petitioner to obtain a labor certification; whether, even assuming that other qualified U.S. workers are available, the United States would still benefit from the foreign

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<sup>1</sup> In announcing this new framework, we vacated our prior precedent decision, *Matter of New York State Department of Transportation*, 22 I&N Dec. 215 (Act. Assoc. Comm’r 1998) (*NYSDOT*).

<sup>2</sup> See also *Poursina v. USCIS*, No. 17-16579, 2019 WL 4051593 (Aug. 28, 2019) (finding USCIS’ decision to grant or deny a national interest waiver to be discretionary in nature).

national's contributions; and whether the national interest in the foreign national's contributions is sufficiently urgent to warrant forgoing the labor certification process. In each case, the factor(s) considered must, taken together, indicate that on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.<sup>3</sup>

## II. ANALYSIS

The Director concluded that the Petitioner qualifies as a member of the professions holding an advanced degree.<sup>4</sup> The remaining issue to be determined is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest. In his decision, the Director found that the Petitioner met the first prong of the *Dhanasar* analytical framework but did not satisfy the second and third prongs. Because the record does not demonstrate that the Petitioner fulfilled the first prong, we will withdraw the Director's decision regarding this matter.

The first prong relates to substantial merit and national importance of the specific proposed endeavor. *Dhanasar*, 26 I&N Dec. at 889. In his initial cover letter, the Petitioner indicated that "he intends to advance his career as a Marketing Manager, developing business activities and promoting cross-border commercial transactions that will enhance, substantially, the United States economy." In addition, the Petitioner provided a statement indicating:

I intend to continue using my expertise and knowledge in the field of Business Administration and Marketing. I have extensive experience working as a Marketing Manager.

....

I have gained extensive experience, skills, and contacts in the field of Marketing, and knowledge that will allow me to help businesses in the United States. I bring over 16 years of experience and acumen in the field of Marketing. I work wonderfully with teams, oversee the operations within a company, manage groups, coordinate with management and engage in planning according to the needs of the company. My knowledge and connections have assured my success in securing investments and increasing company revenue.

In response to the Director's request for evidence, the Petitioner offered an updated statement claiming:

I intend to continue using my expertise and knowledge working as a Marketing Manager in the United States....

....

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<sup>3</sup> See *Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

<sup>4</sup> As the Director found that the Petitioner meets the classification as a member of the professions holding an advanced degree, a determination regarding the Petitioner's classification as an individual of exceptional ability is moot.

I propose to use my skills and knowledge, gained throughout my 20 years of professional experience, to continue working and contributing to large companies using my skills and experience to support U.S. companies exploring other international markets (export products/services) or to consolidate in the domestic market. I can do this successfully by implementing new sales routines, marketing strategies, P&L strategies or developing new products . . . .

My career plan in the United States is to continue supporting U.S. companies to explore other markets (export products/services) or to consolidate in the domestic market. I intend to continue designing marketing strategies, carrying out market research, prompting the growth of internationally important industries, such as aesthetics, and maintaining positive working relationships with peers and colleagues. This will help facilitate company growth, as well as identify viable opportunities for business development via cross-border contracts, specifically the Latin American and American markets which are the two largest in the world.

. . . .

I can continue to improve my company's marketing efforts by leveraging the wealth of my experience on an international scale to target messages effectively and accordingly. In addition, by restructuring internal teams, adopting new technology, expanding market opportunities, focusing on the new customer journey, and allowing for a deeper understanding of marketing touchpoints, I will ultimately create a greater competitive advantage for all of the clients that my company serves.

The record includes documentation pertaining to overall job descriptions of marketing and sales managers, sales trends, marketing shortages, marketing investments, hiring of marketing specialists, the importance and impact of marketing for companies, marketing industrial reports, consumer spending trends, customer experience, future of marketing, managing brands, global marketing and expansion, overseas investment, and cross-border business. Therefore, the record shows that the Petitioner's proposed endeavor has substantial merit, and we agree with the Director with this aspect of the first prong.

However, we do not agree with the Director's determination that the Petitioner satisfied the national importance aspect. The Director indicated:

The Petitioner submitted his professional plan, articles and industry reports regarding the importance of marketing management. The petitioner submitted evidence of possessing more than 15 years of experience in marketing management on an international scale. Additionally, the petitioner submitted testimonial letters attesting to how [he] has aided multiple companies in their national and international business. As such, the proposed endeavor is deemed to be of national importance.

In determining national importance, the relevant question is not the importance of the industry or profession in which the individual will work; instead we focus on the "the specific endeavor that the foreign national proposes to undertake." See *Dhanasar*, 26 I&N Dec. at 889. Here, the Petitioner must demonstrate the national importance of his providing specific marketing services to companies

rather than the national importance of the position or the wide range of business fields or industries in which he intends to work. In *Dhanasar*, we further noted that “we look for broader implications” of the proposed endeavor and that “[a]n undertaking may have national importance for example, because it has national or even global implications within a particular field.” *Id.* We also stated that “[a]n endeavor that has significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area, for instance, may well be understood to have national importance.” *Id.* at 890. Although the Director indicated the Petitioner’s submission of articles and industry reports, the evidence relates to the substantial merit of the proposed endeavor. The Petitioner did not establish how the documentation shows the national importance of his specific endeavor.

In addition, the Director references the Petitioner’s experience and testimonial letters reflecting his prior professional accomplishments. As indicated above, in both of his statements, the Petitioner emphasizes his “expertise and knowledge,” “extensive experience,” and “extensive experience, skills, and contacts in the field of Marketing, and knowledge.” The Petitioner’s experience, skills, and abilities in his field, however, relate to the second prong of the *Dhanasar* framework, which “shifts the focus from the proposed endeavor to the foreign national.” *Id.* at 890. The issue here is whether the specific endeavor that he proposes to undertake has national importance under *Dhanasar*’s first prong.

To evaluate whether the Petitioner’s proposed endeavor satisfies the national importance requirement, we look to evidence documenting the “potential prospective impact” of his work. Although the Petitioner asserts that he will be an asset to companies with whom he will be employed, he has not offered sufficient, specific information and evidence to demonstrate that the prospective impact of his specific proposed endeavor rises to the level of national importance. Instead, as discussed above, the record contains evidence regarding general information about marketing, global expansion, and trade. In *Dhanasar*, we determined that the petitioner’s teaching activities did not rise to the level of having national importance because they would not impact his field more broadly. *Id.* at 893. Here, the record does not show that the Petitioner’s proposed endeavor of providing marketing services stands to sufficiently extend beyond his potential or futuristic employers or clients, to impact the field or any other industries or the U.S. economy more broadly at a level commensurate with national importance.

Furthermore, the Petitioner has not established that the specific endeavor he proposes to undertake has significant potential to employ U.S. workers or otherwise offers substantial positive economic effects for our nation. While he generally claimed that his endeavor “will potentially impact . . . U.S. job creation through serving as manager and director in companies in the U.S.,” the Petitioner did not demonstrate or further explain how his endeavor would somehow influence employment figures, to support his assertions. Without sufficient information or evidence regarding any projected U.S. economic impact or job creation attributable to his future work, the record does not show that benefits to the U.S. regional or national economy resulting from the Petitioner’s marketing services would reach the level of “substantial positive economic effects” contemplated by *Dhanasar*. *Id.* at 890. Accordingly, the Petitioner did not show that his proposed endeavor has national importance.

Because the documentation in the record does not establish the national importance of his proposed endeavor as required by the first prong of the *Dhanasar* precedent decision, the Petitioner has not demonstrated eligibility for a national interest waiver. Further analysis of his eligibility under the second and third prongs outlined in *Dhanasar*, therefore, would serve no meaningful purpose.

### III. CONCLUSION

As the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, we conclude that he has not demonstrated that he is eligible for or otherwise merits a national interest waiver as a matter of discretion. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision.

**ORDER:** The appeal is dismissed.